

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL NO. 1456
LITIGATION)	Civil Action No. 01-12257-PBS
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THIS DOCUMENT RELATES TO:)	Judge Patti B. Saris
<i>The City of New York v. Abbott Labs., et al.</i>)	
(S.D.N.Y. No. 03-CV-06054))	
<i>County of Suffolk v. Abbott Labs., et al.</i>)	
(E.D.N.Y. No. CV-03-229))	
<i>County of Westchester v. Abbott Labs., et al.</i>)	
(S.D.N.Y. No. 03-CV-6178))	
<i>County of Rockland v. Abbott Labs., et al.</i>)	
(S.D.N.Y. No. 03-CV-7055))	
<i>County of Putnam v. Abbott Labs, et al.</i>)	
(S.D.N.Y. No. 05-CV-04740))	
<i>County of Dutchess v. Abbott Labs, et al.</i>)	
(S.D.N.Y. No. 05-CV-06458))	
<i>County of Putnam v. Abbott Labs, et al.</i>)	
(S.D.N.Y. No. 05-CV-04740))	
<i>County of Washington v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00408))	
<i>County of Rensselaer v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00422))	
<i>County of Albany v. Abbott Labs, et al</i>)	
(N.D.N.Y. No. 05-CV-00425))	
<i>County of Warren v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00468))	
<i>County of Greene v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00474))	
<i>County of Saratoga v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00478))	
<i>County of Columbia v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00867))	
<i>Essex County v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00878))	
<i>County of Ulster v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00123))	
<i>County of Chanango v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00354))	
<i>County of Broome v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00456))	
<i>County of Onondaga v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00088))	
<i>County of Tompkins v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00397))	
<i>County of Cayuga v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00423))	

County of Madison v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00714))
County of Cortland v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00881))
County of Herkimer v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00415))
County of Oneida v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00489))
County of Fulton v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00519))
County of St. Lawrence v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00479))
County of Jefferson v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00715))
County of Lewis v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00839))
County of Chautauqua v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06204))
County of Allegany v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06231))
County of Cattaraugus v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06242))
County of Genesee v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06206))
County of Wayne v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06138))
County of Monroe v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06148))
County of Yates v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06172))
County of Niagara v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06296))
County of Seneca v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06370))
County of Orleans v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06371))
County of Ontario v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06373))
County of Schuyler v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06387))
County of Wyoming v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06739))
County of Chemung v. Abbott Lab, et al.)
 (W.D.N.Y. No. 05-CV-06744))
County of Nassau v. Abbott Labs, et al.)
 (E.D.N.Y. No. 04-CV-5120))
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**ELI LILLY AND COMPANY'S SEPARATE MEMORANDUM IN SUPPORT OF
ITS MOTION TO DISMISS (1) THE CONSOLIDATED COMPLAINT OF NEW
YORK CITY AND NEW YORK COUNTIES OTHER THAN NASSAU AND
(2) THE SECOND AMENDED COMPLAINT OF NASSAU COUNTY**

Eli Lilly and Company ("Lilly") joins the consolidated memorandum filed by all defendants. Lilly also files this separate memorandum to highlight the fact that the complaints fail to satisfy the pleading requirements established by this Court in its prior decisions dismissing Suffolk County's allegations against Lilly and the other members of the "Suffolk 13."

The principal allegation in these cases is that Lilly marketed the spread and published a false and misleading AWP. Consol. Comp. ¶436. In support, the consolidated complaint relies on its Exhibit B. Yet, Exhibit B contains no mention of Eli Lilly. The allegations against Lilly are wholly unsupported and should be dismissed.

In Exhibit D to their consolidated complaint, plaintiffs allege that Lilly was sued by the State of Alabama and that Lilly is one of dozens or more companies that received inquiries from Congress. While it is true that Lilly initially was sued by the State of Alabama, it is also true that the State of Alabama voluntarily dismissed Lilly from its case. As to the government investigations, they involve completely different subjects and, in any event, they were not adjudicated. As Merck explains in its separate memorandum, the mere fact that the government is conducting an investigation is not a basis for a plaintiff to file a fraud case.

Lilly is not a party to any of the other AWP cases pending before this Court, and it should not be a party to this one either. Suffolk County's case was supposed to be the lead or test case to determine whether there was a basis for the Counties to proceed. Lilly was dismissed from that case. That should have been the end of the matter.

The Counties have not made a proper showing why Lilly should remain a party to these cases. For all of these reasons, and for the reasons stated in defendants' consolidated memorandum, these complaints should be dismissed as to Lilly.

Dated: March 3, 2006

Respectfully submitted,



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